IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 141 of 2002

with

CIVIL REVISION APPLICATION No 21 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARSHAD BABUBHAI AMIN

Versus

PRAVINA CHANDRAKANT PATEL

Appearance:

1. Civil Revision Application No. 141 of 2002
   MR NILESH M SHAH for Petitioner No. 1
   MR PREMAL R JOSHI for Respondent No. 1-3
2. Civil Revision Application No. 21 of 2002
   MR NILESH M SHAH for Petitioner No. 1
   MR PREMAL R JOSHI for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 24/04/2002

Date of pronouncement:30/04/2002

C.A.V. JUDGEMENT

1. The respondents-original plaintiffs Mrs. Pravinben Chandrakant Patel & Ors. have filed one Civil Suit No. 932 of 1989 against the present petitioner /orig. defendant Harshad Babubhai Amin in the City Civil Court, Ahmedabad which is pending for final hearing. The respondent-orig. plaintiffs gave an application Exh. 47, in the said suit to delete issue No.5 under Order 14 Rule 5 of the Civil Procedure Code. Issue No. 5 at Exh. 27 reads as under:- "Whether the defendant proves that the Will is duly executed in his favour ?" The Trial Court rejected the said application, however, ordered for framing of additional issue as 5(A) which is as under:"Whether the plaintiff proves that the defendant has fabricated the Will dated: 9.11.1988 ?" It is against this order the present petitioner-defendant Mr. Amin has preferred this Civil Revision Application.

2. At the time of hearing, L.A. for the petitioner-orig.defendant submitted that it is the contention of the respondents-plaintiffs that they have become the owner of the suit premises by virtue of a Will and the propounder of the Will respondent-defendants have to prove the Will dated 11.3.1987 in the Court of Law. He further submitted that under the Will dated 9.11.88, executed in his favour, he has become the owner/occupier of the suit premises and he has not claimed anything under the Will and therefore, additional issue No.5A is required to be deleted.

3. At the time of hearing, L.A. for the respondents-plaintiffs have produced the xerox copy of the order in C.R.A. No. 643 of 2001 passed by this Court on 20.6.2001 whereby, they have challenged the order passed below Exh. 47 and this Court (Coram: A.K. Trivedi, J as he then was) pleased to reject the same summarily by detailed order dated 20.6.2001. Therefore, the respondent-plaintiffs have already moved this Court for redressal of their grievance.

4. By filing the separate C.R.A. No. 21 of 2002, the present petitioner/original defendant Shri HB Amin has challenged the order passed by the Ld. Trial Court rejecting his application of production of documents at

exh. 55 dtd. 31.8.2001. The Ld. Counsel for the petitioner submitted that, as the Trial Court framed the issue No.5A for which the burden of proof is rest on the defendant/respondents and has to produced the documents on record which are important. The Trial Court ought to have allowed the applicant to produce such documents in the interest of justice. In support of his submission, the Ld. Counse has also relied upon the case of Anand Rao Bandu Jadav and Ors. v/s. Bibijan, reported in AIR 1983 Bombay 32 Against the aforesaid, the Ld. Counsel for the respondents-orignal plaintiffs have contended that, the cause shown for production of documents is not sufficient cause under Order 13, Rule 2 of the C.P.C. Therefore, such order cannot be said to be material irregularity as contained under Sec. 115 of the C.P.C. and accordingly, prayed for dismissal of this C.R.A.

5. I have perused the authroity and submissions made by the Ld. Counsel for the respective parties. The object of Order 13 Rule 1, of the C.P.C. is to see that the evidence is produced at the earliest. This would entitled to secure speedy and early conduct of the suit. Obviously, the parties cannot be permitted to produce the documentary evidence as and when they wish merely because they are willing to pay the cost to the other side.

6. So far as the maintenability of the Revision Application under Sec. 115 of the CPC is concerned, Mr. Premal Joshi, LA for the respondent, relied upon judgment of Hon. Apex Court in the case of Madanlal V/s. Shyamal reported in AIR 2002, SC page 100. In the case before the Apex Court, the appellant, filed the Civil Suit for specific performance of agreement to sale. In the said suit, the defendant shought to produce the certified copy of the order passed by the Land Acquisition Officer, registered sale deed, and electricity bills. The documents were required to be produced at relevant time before the settlement of the issue. It is to say of the defendant that the documents were given to one Law Graduate and his trusted person for producing the same before the Court but he lost the smae and therefore, he has filed the application after obtaining the certified copy. The Court came to the conclusion that said cause shown by the defendants can be cconsidered a good cause and as provided under Order 13 Rule 2, of the C.P.C., and further held that the defendant's Revision Application for production of documents, before his evidence is required to be recorded, it does not amount to any "irregularity." Therefore, the order cannot be interfered with under Sec. 115 of the C.P.C.

Under these circumstances, the aforesaid authority could not help the respondent in view of the facts of the case before me, the plaintiff's deposition is over and the matter is now pending for the defendant and his witneeses to enter into the witness box.

7. In case of Naval Kishore Tulara Vs. Dineshchandra Gupata, reported in 2001 SC p.2542 and relied upon by Mr. NM Shah, LA for Mr. Amin, wherein, the full bench consisting of 3 Judges, of the Supreme Court has considered the scope of revision under Sec. 115 of the C.P.C. The Revision Application was filed against the order holding that the agreement to sale was not admissible, since the same being unregistered document. The revisional Court leaving aside the question of administration, of the documents, embarked upon the inquiry and validity of the documents and held that it is not a valid contract. Under these circumstances, the Apex Court cmae to the conclusion that the said order is beyond the scope of revision and suffers from the patent illegality.

The facts before the Apex Court in the aforesaid case, is different then the facts before me. Here the appellant-orig. defendants came in the revision dissatisfied with the framing of the additional issues at 5-A in issue Exh. 27 while deciding the application given by the respondents-orig. plaintiffs by deleting the issue No.5 in Exh. 27. Therefore, this authority will not help Mr. Shah, LA for the appellant-orig. defendants.

8. Under the circumstances, the only question now requires to be taken into consideration is regarding certain sections as contemplated under Order 13, Rule 1 & 2 of the C.P.C. If we peruse the application at Exh. 55, by the petitioner-original defendant, on the ground that the defendant-original appellant has failed to show sufficient reason for late production of the documents. It is not his case, that the documents were not in his possession or he could not lay his hands to produce the documents at the earliest. Such irresponsible behaviour on the part of the petitioner- orig. defendant cannot be allowed when the matter is pending for recording of evidence of defendants' side and when the plaintiff's and their witnesses have entered into the witness box at the earlier stage. Therefore, the law does not help those who are sleeping over their rights, but helps those who are vigilent of their rights. Therefore, this C.R.A. is

required to be dismissed.

9. In light of the aforesaid discussion, when the respondents-original plaintiffs had challenged the order passed below Exh. 47, earlier point of time by filing CRA No. 643 of 2002 and when this Court without issuing any notice to the respondent-orig. defendant has summarily rejected the said CRA. Now, respondent-orig. defendant has no right to challenge the said order on the same ground.

10. As discussed in foregoing para, I came to the conclusion that, the responent-orig.defendant has not given sufficient reason for allowing his applicaiton for production of the documents vide exh. 55 and the same is rejected. I do not find any error in any way, in rejecting the CRA therefore, both these CRAs deserve to be dismissed and accordingly dismissed. No orders as to costs. Rule discharged.

[SHARAD D. DAVE, J]

snt./